

SAFE 2 RULE (GHG LIGHT DUTY VEHICLE STANDARDS)

ISSUE SUMMARY:

EPA and NHTSA in a joint rulemaking revised or established greenhouse gas (GHG) emissions and fuel economy standards under the CAA and EPCA, respectively, for model year 2021 and later passenger cars and light trucks. 85 FR 24174 (April 30, 2020) (informally known as the “SAFE 2” rule). Several groups of petitioners (23 states, D.C., and 4 cities, led by California; 12 environmental and public interest organizations, led by NRDC and EDF; 3 local air districts; Competitive Enterprise Institute (CEI); ethanol/biofuel groups; and utilities and advanced technology industry groups) challenged both sets of standards as unjustified based on the Agencies’ rulemaking records and applicable law, with CEI arguing the resulting standards are still too stringent and all other Petitioners arguing they are not stringent enough.

UPCOMING MILESTONES:

- EPA’s brief TBD – court has not yet issued a briefing schedule

BACKGROUND:

On April 30, 2020, EPA and US DOT’s National Highway Traffic Safety Administration (NHTSA) jointly published “The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks,” 85 Fed. Reg. 24,174 (“SAFE 2”). The rule establishes two consonant sets of vehicle regulations for passenger cars and light trucks: one, issued by NHTSA, establishes corporate average fuel economy standards; the other, issued by EPA, establishes vehicle greenhouse-gas emission standards. NHTSA’s action replaces a fuel economy standard set in 2012 for model year 2021 vehicles. The rule establishes fuel-economy standards for the first time for model years 2022-2026. EPA’s action replaces its existing greenhouse-gas emission standards for model years 2021-2026, which were originally set in 2012.

In establishing fuel-economy and greenhouse-gas standards in the rule, each agency explained how it weighed required factors in each agency’s governing statute (for EPA, the Clean Air Act; for NHTSA, the Energy Policy and Conservation Act or EPCA). The Agencies cited extensive modeling and analysis of variables such as fuel prices, vehicle sales, traffic fatalities, vehicle miles traveled, environmental impacts, and multifaceted elements of automotive design and technology.

Although briefs have not yet been filed, Petitioners have previewed their arguments in a procedural motion as follows. Competitive Enterprise Institute (CEI) will argue the Agencies did not go far enough in reducing the stringency of the standards.

State and local governments, NGOs, utilities and advanced technology industry groups (“Coordinating Petitioners”) will argue the agencies made material errors in the analyses of their rules, including in their assumptions, modeling, and conclusions on technology costs, consumer costs and preferences, public and environmental health, vehicle safety, and overall social costs and benefits. Petitioners will argue these errors individually and collectively undermine the Agencies’ justifications for their rules and inflate the rules’ alleged benefits by tens of billions of dollars.

Coordinating Petitioners will contend EPA violated Section 202 of the Clean Air Act, and that NHTSA violated Section 502 of the Energy Policy and Conservation Act, 49 U.S.C. § 32902, in several respects. They also plan to raise other challenges, including under NEPA and the ESA.

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Clean Fuels Development Coalition and other ethanol/biofuels groups (“CFDC”) will focus their challenge on the consideration and treatment of renewable fuels and high-octane low-carbon fuels in the SAFE rulemaking and the elimination of incentives for flex fuel vehicles.

KEY EXTERNAL STAKEHOLDERS:

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| <input checked="" type="checkbox"/> Congress | <input checked="" type="checkbox"/> Industry | <input checked="" type="checkbox"/> States | <input type="checkbox"/> Tribes | <input type="checkbox"/> Media | <input checked="" type="checkbox"/> Other Federal Agency |
| <input checked="" type="checkbox"/> NGO | <input type="checkbox"/> Local Government | <input type="checkbox"/> Other _____ | | | |

MOVING FORWARD:

- The case defense is proceeding.

LEAD OFFICE/REGION:

OGC

OTHER KEY OFFICES/REGIONS:

OAR